In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1543

PAUL "J" NIX, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of wilfully refusing to submit to induction into the armed forces, in violation of 50 U.S.C. App. 462(a). He was sentenced to the custody of the Attorney General for three years on the condition that he be confined to jail for six months and thereafter be required to perform twenty-four months of alternative civilian service. The court of appeals affirmed *per curiam* (Pet. App.).

The petitioner was reclassified I-A on February 5, 1968. On July 18, 1968, he enlisted in the Naval Reserves and received orders to report for duty on November 14, 1968. On that day he reported and was immediately discharged for the convenience of the government.

On February 28, 1969, an order to report for induction on March 25, 1969 was mailed to the petitioner. On March 21, petitioner for the first time requested Conscientious Objector Form 150; he completed the form and returned it to his local board on March 24, 1969. The board postponed his induction and scheduled a "courtesy interview" for April 4, 1969. At that interview, petitioner stated that he had become a Jehovah's Witness in the summer of 1968, that he had been against war since he was a child, and that his conscientious objector views had developed shortly after he began studying the Bible. On April 8, 1969, the local board notified petitioner that it had decided not to reopen his classification because it had found that there was no change in status resulting from circumstances beyond his control. He was ordered to report for induction on June 30, 1969, and, on that date, petitioner reported for, but refused to submit to, induction; the instant indictment and conviction followed, and the court of appeals affirmed.

Petitioner essentially challenges the validity of the last proviso of Selective Service regulation 32 C.F.R. 1625.2 on the ground that it is neither authorized by statute nor consistent with the statutory exemption for conscientious objectors (50 U.S.C. App. 456(j)). These contentions have now been rejected

by this Court in *Ehlert* v. *United States*, No. 120, this Term, decided April 21, 1971. That decision is dispositive of the issues presented in this petition.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MAY 1971.

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[1] Moreover, after receiving his Form 150, petitioner's local board afforded him a "courtesy interview" to discuss his conscientious objector claim; it determined not to reopen his I-A classification only after in fact considering his claim in light of the statements he made during the interview, and the courts below properly found ample justification for the conclusion that petitioner's beliefs had matured before his induction notice. See, *e.g.*, *United States* v. *Uhl*, 436 F. 2d 773 (C.A. 9); *Dugdale* v. *United States*, 389 F. 2d 482 (C.A. 9); *Davis* v. *United States*, 374 F. 2d 1 (C.A. 5); *United States* v. *Gearey*, 368 F. 2d 144 (C.A. 2).

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